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BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Amendment of Section 73.202(b)
Table of FM Allotments
Esperanza, Puerto Rico

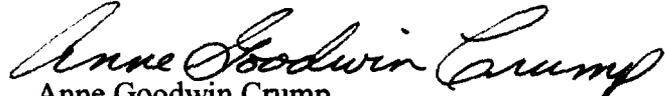
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Dear Mr. Caton:

Transmitted herewith, on behalf of Carlos J. Colon Ventura, are an original and four copies of his "Opposition to Petition for Reconsideration" with regard to the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for Carlos J. Colon Ventura

Enclosures

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In the Matter of)
)
Amendment of Section 73.202(b),)
Table of FM Allotments)
(Esperanza, Puerto Rico))

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Directed to: Chief, Allocations Branch

OPPOSITION TO PETITION FOR RECONSIDERATION

Carlos J. Colon Ventura ("Mr. Colon"), by his attorneys, hereby respectfully submits his Opposition to the Petition for Reconsideration submitted by Esperanza Broadcasting ("Esperanza") on October 23, 1995. With respect thereto, the following is stated:

1. Esperanza is seeking reconsideration of the Commission's return of its petition for rulemaking which sought to amend the FM Table of Allotments to allot Channel 258B to Esperanza, Puerto Rico, and to change the allotment for WVIQ(FM), Christiansted, United States Virgin Islands, to Channel 293B in order to accommodate the proposed allotment. The petition for rulemaking was returned because the proposed Esperanza allotment was dependent upon the allotment changes set forth in the Report and Order in MM Docket No. 91-259, DA 95-1323, released June 22, 1995, and that decision has not yet become final. Petitions for reconsideration of that Report and Order remain pending.

2. Esperanza argues that its petition for rulemaking should not have been returned. Esperanza's sole basis for its argument is the acceptance for filing of Mr. Colon's pending application for modification of the licensed facilities of WSAN(FM), Vieques, Puerto Rico, File

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No. BPH-950807IG. In that application, Mr. Colon requested authorization of the WSAN(FM) transmitter site to a new location and to operate on channel 252A at Las Piedras, Puerto Rico in lieu of Channel 255B at Vieques. Mr. Colon's application sought to effectuate one of the allotment changes set forth in the Report and Order. Esperanza claims that since Mr. Colon's application was accepted for filing, its petition for rulemaking also should have been accepted.

3. Esperanza's argument compares apples and oranges, however. Mr. Colon filed his application on the specified effective date of the Report and Order, August 7, 1995. See Report and Order at ¶ 21. Since, pursuant to Section 1.420(f) of the Commission's Rules, the pending petitions for reconsideration created an automatic stay of the Report and Order, Mr. Colon submitted a request for waiver of the automatic stay with his application. Esperanza, on the other hand, submitted its petition for rulemaking on July 28, 1995, before the specified effective date of the Report and Order. Therefore, even if the automatic stay were not in effect, Esperanza's petition would have been subject to return as prematurely filed. Further, Esperanza makes no claim that it sought a waiver of the automatic stay in order to allow it to file its petition.¹

4. In contrast, if there were no automatic stay, Mr. Colon could have filed his application on August 7 without impediment. As it was, Mr. Colon submitted a waiver request

¹ Indeed, Esperanza includes a rather odd and gratuitous remark in favor of retaining the automatic stay in its Petition for Reconsideration. While the automatic stay may benefit Arso Radio Corporation, a party in MM Docket 91-259 which is also represented by Esperanza's counsel, it is detrimental to Esperanza's claimed interests. If the automatic stay rule were no longer in force, Esperanza could have filed its petition for rulemaking on the specified effective date of the Report and Order, and that petition then would not have been subject to return for premature filing.

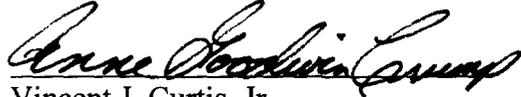
demonstrating good cause for waiver of the automatic stay. Thus, Esperanza and Mr. Colon can by no means be considered similarly situated parties.

5. Esperanza also makes the suggestion that if its own petition for rulemaking is not accepted, that Mr. Colon's application should be dismissed or held without action. Esperanza offers no legal theory nor explanation as to how there is any logical connection between the two requested actions. A grant of Mr. Colon's application would have no effect whatsoever on the acceptability of Esperanza's petition for rulemaking or any possible future action the Commission might take with regard to that petition. Thus, standing alone, Esperanza's request appears to be motivated more by spite than by any conceivable benefit to itself. When combined with its attack on the automatic stay rulemaking, one must speculate as to a hidden agenda.

WHEREFORE, the premises considered, Mr. Colon respectfully requests that Esperanza's Petition for Reconsideration be denied.

Respectfully submitted,

CARLOS J. COLON VENTURA

By: 
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His Attorneys

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November 3, 1995

CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Opposition to Petition for Reconsideration" were sent this 6th day of July, 1994, by first-class United States mail, postage prepaid, to the following:

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